IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 16TH AUGUST 2007 / 25TH SRAVANA 1929

Crl.Rev.Pet.No. 3001 of 2007()

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CRA.80/2007 of ADDL. SESSIONS COURT (ADHOC), KOZHIKODE
ST.1876/2004 of JUDL. MAGISTRATE OF FIRST CLASS-III, KOZHIKODE

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REVN. PETITIONER: APPELLANT/ACCUSED

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M.A.AHAMMED, S/O.MAMMADKOYA,
POOVALAPPIL HOUSE, KOLATHARA P.O.,
KOZHIKODE.

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENTS: RESPONDENTS/COMPLAINANT & STATE

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1. P.K.VASUDEVAN, PROPRIETOR,
THREE MENS AGENCIES,
23/12620, BYE PASS ROAD,
THIRUVANNUR, KOZHIKODE.

2. STATE OF KERALA
REP. PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S. SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 16/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**V.RAMKUMAR, J.**

**.....**

**Crl.R.P. No. 3001 of 2007**

**.....**

**Dated: 16th day of August 2007**

**O R D E R**

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in S.T. No. 1876 of 2004 on the file of the J.F.C.M-III, Kozhikode challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

4. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. Having regard to the facts and circumstances of the case, I am of the view that no interference is called for with regard to the sentence imposed on the

revision petitioner by the lower appellate court which has sentenced him to imprisonment till rising of the court and to pay the cheque amount of Rs. 25,000/- as compensation under Section 357 (3) Cr.P.C. with a default sentence of simple imprisonment for three months. The learned counsel for the revision petitioner submits that he is undergoing the default sentence for nearly one month. The default sentence already undergone by the revision petitioner shall be deducted from the default sentence imposed on him.

Subject to the above modification in the sentence imposed by the court below this Revision is disposed of.

V. RAMKUMAR, JUDGE.

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